

**BEFORE THE  
CASE REVIEW PANEL**

In the Matter of J.B. and C.B.,	)	
Petitioners	)	
and	)	<b>CAUSE NO. 040902-34</b>
The Indiana High School Athletic Assoc.,	)	
Respondent	)	
	)	
Review Conducted Pursuant to	)	<b>Closed Hearing</b>
I.C. 20-5.63 <i>et seq.</i>	)	

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

**Procedural History**

J.B. and C.B. (Hereafter, Petitioners) are twins. They were born on October 21, 1986. They have participated and hope to continue to participate in athletic contests sanctioned by Respondent. They have completed three years of high school at Mount Vernon High School (hereafter, Mount Vernon) in the MSD of Mount Vernon. Both will be seniors during the 2004-2005 school year. J.B. and C.B. enrolled in Evansville Day School for the 2004-2005 school year. Petitioners' change in enrollment was not accompanied by a change of residence. This would provide them limited eligibility based on Respondent's **Rule C-19-6.2** (Limited Eligibility Rule).<sup>1</sup>

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<sup>1</sup>The Indiana High School Athletic Association (IHSAA) has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders (Part II, Boys Interschool Sports Rules, **Rules 50 through 60**, Part III, Girls Interschool Sports Rules, **Rules 100 through 111**), but most of the by-laws are "common" to all potential athletes and, hence, begin with "C." **Rule 19**, which governs eligibility and transfer, is common to all athletes. **Rule C-19-6.2**, provides as follows:

A student who transfers without a corresponding change of residence to a new district or territory by the student's parent(s)/guardian(s) may be declared to have limited eligibility. (All references herein are to the IHSAA's By-Laws for the 2004-2005 school year.)

Petitioners<sup>2</sup> sought eligibility pursuant to the Hardship Rule, **Rule C-17-8.1**.<sup>3</sup> In the IHSAA Athletic Transfer Report, the parents designated “academic/course offerings” as the reason for the change of school. While the principal of Evansville Day School recommended full eligibility under the hardship exception to a limited eligibility case, under **Rule C-17-8.5**,<sup>4</sup> the principal of Mount Vernon did not make the same recommendation, instead recommending limited eligibility for both Petitioners. Petitioners and the principal of Evansville Day School submitted letters to the Commissioner indicating the transfers were not made for athletic reasons. The Commissioner’s action on August 11, 2004, was to grant Petitioners limited eligibility pursuant to **Rule C-19-6.2**. On behalf of Petitioners, the principal of Evansville Day School requested a hearing to appeal the limited eligibility decision. The hearing was scheduled for August 19, 2004.

Respondent’s Review Committee met on August 19, 2004. It issued its decision on August 30, 2004, affirming the decision of the Commissioner. The Review Committee noted the Petitioners were enrolled at and attended Mt. Vernon High School, a public school serving their residence, through the end of the 2003-2004 school year. They enrolled at Evansville Day School for the 2004-2005 school year on August 2, 2004. On the IHSAA Athletic Transfer Report, the parent indicated the reason for transfer was “academic/course offerings.” Mount Vernon, the sending school, stated the reason for withdrawal was to “attend Day School.” Mount Vernon recommended limited eligibility under **Rule C-19-6.2**. Mount Vernon did not sign the Hardship Verification.

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<sup>2</sup>Anytime the term “Petitioners” is used, it will include Petitioners’ parents, unless otherwise noted.

<sup>3</sup>**Rule C-17-8.1** (The Hardship Rule) grants the Commissioner, his designee, or the Committee the authority to “set aside the effect of any Rule when the affected party establishes” to the satisfaction of Respondent that all of the following conditions have been met:

- a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;
- b. The spirit of the Rule has not been violated; and
- c. There exists in the particular case circumstances showing an undue hardship that would result from enforcement of the Rule.

<sup>4</sup>**Rule C-17-8.5** grants the Commissioner, his designee or the Committee the authority to set aside the effect of the transfer rule and grant full eligibility if:

- (a) the student continues to reside with his/her parent(s) or guardian(s),
- (b) the student establishes, to the reasonable satisfaction of the Commissioner, his designee or the Committee, that the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer, and
- (c) the principals of the sending and receiving schools each affirm in writing that the transfer is in the best interest of the student and there is (sic) no athletic related motives surrounding the transfer.

Evansville Day School also completed the IHSAA Athletic Transfer Report, indicating the transfer was because of “academics.” Evansville Day School recommended full eligibility under **Rule C-17-8.5**, and completed and signed the Hardship Verification. Evansville Day School also submitted a letter explaining that Petitioners and their sister had all previously attended Evansville Day School, but that because of their father’s job situation, the boys withdrew and enrolled at Mount Vernon. The sister graduated from Evansville Day School in 2001. Now, the parents can afford the tuition at Evansville Day School.

During his freshman year, C.B. played varsity soccer and was on the junior varsity golf team. As a sophomore, C.B. played on the varsity soccer and football teams and as a junior he again was on the varsity soccer and football teams and also played junior-varsity golf. During his freshman year, J.B. was on the varsity soccer team. He was on the varsity soccer and football teams and ran junior-varsity track during his sophomore year, and as a junior was on the varsity soccer, football and track teams. Petitioners are arguably two of the better, if not the two best, players on the soccer team.

According to information submitted before the Review Committee, the parents were concerned about the after-school environment the boys were in, which involved girls, drinking and drugs, and wanted to get the boys out of these influences. There were also some course offerings at Evansville Day School which the parents believed were not offered at Mount Vernon. Finally, the parents explained that the boys’ grades dropped since their freshman year at Mount Vernon. There was no explanation of a change in financial circumstances.

The Review Committee determined Petitioners transferred schools without a corresponding change of residence by their parent(s) or guardian(s) and therefore are entitled, at most, to limited eligibility, unless they meet the criteria at **Rule C-19-6.1**, or they can establish entitlement to a hardship exception. Review Committee’s Conclusion No. 1.

The Petitioners have presented no evidence to qualify them for full eligibility under **Rule C-19-6.1**. Review Committee’s Conclusion No. 2. Petitioners cannot obtain full eligibility under **Rule C-17-8.5** as they did not secure both principals’ signatures on the Verification Section of the Transfer Report. Review Committee’s Conclusion No. 3. Finally, the Review Committee did not find the hardship provisions of **Rule C-17-8.1** had been met. Review Committee’s Conclusion No. 4.

## **APPEAL TO THE CASE REVIEW PANEL**

Petitioners appealed the adverse decision of the Review Committee to the Indiana Case Review Panel (CRP) on September 2, 2004.<sup>5</sup> The CRP notified the parties by memorandum of

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<sup>5</sup>The CRP is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decisions are to be

September 3, 2004, of their respective hearing rights. The Respondent was asked to forward its record. The Parents were provided with a "Consent to Disclose Student Information." The Parents, on September 13, 2004, elected to have the proceedings **closed** to the public. A hearing was set for September 15, 2004, in the offices of the Indiana Department of Education.

The parties appeared on September 15, 2004. Petitioners were represented by their parents and the principal of Evansville Day School. Respondent was represented by counsel. A brief pre-hearing conference was conducted. Petitioners submitted three exhibits which were marked P-1, P-2, and P-3. The exhibits consisted of a newspaper article about Petitioners' mother, and two letters supportive of Petitioners' mother for the 2003 Project E Teacher Award. Respondent objected due to the hearsay nature of Petitioners' exhibits. All three exhibits were admitted over objection. Respondents submitted one additional exhibit, which was marked R-1. This exhibit, a statement concerning a meeting held on August 18, 2004, with Petitioners, written by the principal of Mount Vernon, was admitted without objection.<sup>6</sup>

The record from the proceedings before Respondent's Review Committee was received. Additional testimony was taken. Based upon the foregoing, the following Findings of Fact, Conclusions of Law, and Orders are determined.

#### FINDINGS OF FACT

1. C.B. and J.B. are each 17 years old (d.o.b. October 21, 1986) and are seniors during the current 2004-2005 school year. They are twins. They reside with their parents within the school district boundaries of the MSD of Mount Vernon.
2. Petitioners attended Mount Vernon High School for their first three years of high school.
3. C.B. played varsity soccer during his first three years of high school. In addition, C.B. played junior varsity golf as a freshman and junior, and also played varsity football as a sophomore and junior.
4. J.B. played varsity soccer during his freshman year. J.B. played varsity soccer and football, and ran junior-varsity track as a sophomore. As a junior, J.B. was on the varsity soccer, football, and track teams.

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student-specific, applying only to the case before the CRP. The CRP's decision does not affect any By-Law of the IHSAA.

<sup>6</sup>Joan Keller served as the Chair. She was joined by CRP members Scott Eales, Denise Gilliland, Thomas Huberty, James Perkins, Jr., Brenda Sebastian, Earl Smith, and Brad Tucker.

5. On August 1, 2004, Petitioners' parents learned of certain of Petitioners' activities that caused them great concern. The parents became aware that Petitioners sneaked out of the house late at night and attended parties where alcohol and drugs were available.
6. The parents had already been concerned about the apparent lack of supervision or curfew for some of Petitioners' friends, as well as a drop in Petitioners' grades from their freshman through junior years.
7. On August 1, 2004, the parents decided they needed to change the Petitioners' learning environment and decided to enroll the Petitioners' in Evansville Day School.
8. Petitioners' father met with the principal of Evansville Day School on August 2, 2004, and enrolled the Petitioners at Evansville Day School.
9. Petitioners' enrollment at Evansville Day School was not accompanied by a corresponding change of residence by the Petitioners' parents.
10. Although Petitioners' father signed the IHSA Athletic Transfer Report indicating the reason for transfer was "academic/course offerings," he did not identify any courses in which Petitioners would enroll, nor investigate as to whether any courses in which Petitioners would enroll at Evansville Day School were offered by Mount Vernon. He did consider class size and environment as important components of "academic/course offerings."
11. Petitioners' father hand-delivered the IHSA Athletic Transfer Report to Mount Vernon on August 2, 2004. The principal of Mount Vernon signed the IHSA Athletic Transfer Report recommending limited eligibility. He did not recommend full eligibility under the hardship exception to a limited eligibility case, under **Rule C-17-8.5**.
12. The principal of Evansville Day School signed the IHSA Athletic Transfer Report on August 10, 2004, recommending full eligibility under the hardship exception to a limited eligibility case, under **Rule C-17-8.5**. This recommendation requires a determination that there are no athletically motivated reasons for the transfer and that the transfer is in the best interest of the student. The principal of Evansville Day School testified he would have to defer to the parents in determining whether a transfer was in the best interest of a student, as only a parent can determine what is best for his child.
13. The Petitioners' father testified that girls were making calls to his sons at all hours on their cell phones. As a result, he had their cell phone service discontinued.
14. The Petitioners' father testified generally to negative influences on Petitioners. No reference was made to any activity or event occurring within Mount Vernon High School.

15. The Petitioners' father did relate to the principal of Mount Vernon High School an incident where two cousins convinced his sons to sneak out of the house and accompany them to a cabin owned by their grandfather. They subsequently broke in to gain entrance.
16. Petitioners' father expressed concern over the negative influence that one cousin who had enrolled at Mount Vernon as a freshman on August 12, 2004, would have on his sons. This cousin never did attend Mount Vernon after enrolling.
17. Petitioners did attend the Mount Vernon home football game on Friday, September 3, 2004. One of the boys did attempt to attend the after game dance but was refused admission as he was no longer a student at the school.
18. The principal of Mount Vernon testified that if Petitioners had remained at Mount Vernon, they likely would have been the two best soccer players on the team.
19. Although Evansville Day School has a soccer team, it does not have a junior varsity soccer team.<sup>7</sup>

#### CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. P.L. 15-2000, adding I.C. 20-5-63 *et seq.* to the Indiana Code. The Case Review Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent's adverse eligibility determination.

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<sup>7</sup>Although Petitioners had participated in other sports in addition to soccer, the focus of the hearing was on soccer. Evansville Day School does not have football or track teams. It does have a golf team, although there was no testimony or evidence as to whether there was a junior varsity team. Petitioners did not express any concern over the apparent lack of opportunity for Petitioners to play football or golf, or to run track. Therefore, the other sports are not addressed in this decision.

2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. Respondent's Review Committee stated the philosophy of the transfer rule in its ruling:
  - a. Participation in interschool athletics is a privilege provided for students who meet the democratically-established standards of qualification as set forth by the Association.
  - b. The privilege of participation in interschool athletics should fundamentally be available to bona fide students in school districts where their parents or legally-established guardians reside.
  - c. Standards governing residence and transfer are a necessary prerequisite to participation in interschool athletics because:
    - (1) they protect the opportunities of bona fide resident students to participate;
    - (2) they provide a fundamentally fair and equitable framework in which interschool athletic competition, in an educational setting, can take place;
    - (3) they provide uniform standards for all schools to follow in maintaining athletic competition;
    - (4) they support the educational philosophy that athletics is a privilege which must not be permitted to assume a dominant position in a Student's or school's program;
    - (5) they keep the focus of educators and students on the fact that students attend school to receive an education first and participate in athletics second;
    - (6) they maintain the fundamental principle that a high school student should live at home with his/her parents or legally-appointed guardian (if the parents are deceased) and attend school in the school district in which the parents or guardians live;
    - (7) they reinforce the view that the family is a strong and viable unit in our society, and as such, is the best place for Students to live while attending high school;
    - (8) they serve as a deterrent to students who would transfer schools for athletic reasons and to individuals who would seek to recruit Student athletes to attend a particular school for the purpose of building athletic strength;
    - (9) they serve as a deterrent to students running away from or avoiding an athletic conflict or discipline that has been imposed;
    - (10) they protect school programs from losing students who have established an identity as an athlete and, as such, are contributors to the overall school program image.

Respondent's **Rule C-19** (Eligibility and Transfer) attempts to fulfill this philosophy by setting forth rules addressing the athletic eligibility of students who transfer for a variety reasons.

4. A student who transfers primarily for athletic reasons becomes ineligible to participate in interschool athletics for a period not to exceed 365 days from the date the student enrolls at the new school. **Rule C-19-4.** The evidence and testimony do not support a determination that Petitioners transferred primarily for athletic reasons.
5. A student who transfers with a corresponding change of residence to a new district by the student's parents may be declared immediately eligible, provided there is a bona fide change of residence. **Rule C-19-5.** Petitioners have not had a change of residence.
6. A student who transfers without a corresponding change of residence to a new district by the student's parents may be declared immediately eligible provided there has been provided to Respondent reliable, credible and probative evidence that one of thirteen (13) enumerated criteria has been met. **Rule C-19-6.1.** Petitioners do not meet the criteria of **Rule C-19-6.1.**
7. The Respondent has the authority to set aside the effect of the transfer rule and grant a student full eligibility if (a) the student continues to reside with his parents, (b) the student establishes to the satisfaction of Respondent that the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer, and (c) the principals of the sending and receiving schools each affirm in writing that the transfer is in the best interest of the student and there are no athletic related motives surrounding the transfer. **Rule C-17-8.5.** The requirements of this rule are not met as the principal of the sending school did not make the requisite affirmation.
8. Pursuant to **Rule C-17-8.1**, the Respondent has the authority to set aside the effect of the transfer rule if all of the following conditions are met:
  - a. Strict enforcement of the Rule in the particular case will not serve to accomplish the purpose of the Rule;
  - b. The spirit of the Rule has not been violated; and
  - c. There exists in the particular case circumstances showing an undue hardship which would result from enforcement of the Rule.

Petitioners claim a hardship and argue that the transfer to Evansville Day School was caused by circumstances beyond their control. The evidence is otherwise and shows the transfer being a choice made by Petitioners' parents in response, at least in part, to certain behaviors and choices of Petitioners. Ordinary cases shall not be considered hardship; rather, the conditions which cause a violation of a Rule, . . . , or the failure to meet the eligibility requirements must be beyond the control of the school, the coach, the student, the parents and/or the affected party. **Rule C-17-8.4.** Petitioners' transfer to Evansville Day School is not a hardship such that the transfer rules should be set aside.



## **ORDER**

The Case Review Panel, by a vote of 6-2, upholds the decision of the Respondent to grant Petitioners limited eligibility at Evansville Day School for 365 days from the date of their last athletic contest at Mount Vernon High School.

DATE: September 27, 2004

/s/ Joan Keller, Chair  
Case Review Panel

## **APPEAL RIGHT**

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.